

Burnett v. Chetwood.

1817.

SOUTHEY

v.

SHERWOOD.

3 Dec. 7. 217.

“ *Parker C.*

“ A bill brought by the Plaintiff as executor of *Burnett*,
 “ the author of *Archæologia sacra*, against the Defendant
 “ for an Injunction to stay the printing and publishing a
 “ translation of the said book, suggesting it to be an in-
 “ jury to the executor, in whom the property of the book
 “ was vested by 8 *An. c.* 19.; it was insisted on for the De-
 “ fendant, that a translation of a book was not within the
 “ intent of the act, which being intended to encourage
 “ learning by giving the advantage of the book to the
 “ author, could be intended only to restrain the mechanical
 “ art of printing, and that others should not pirate the copy
 “ and gain an advantage to themselves by reprinting it;
 “ but not to hinder a translation of the book into another
 “ language, which in some respects may be called a different
 “ book, and the translator may be said to be the author, in
 “ as much as some skill in language is requisite thereto,
 “ and not barely a mechanic art, as in the case of reprint-
 “ ing in the same language; that the translator dresses it up
 “ and clothes the sense in his own style and expressions,
 “ and at least puts it into a different form from the original,
 “ and *forma dat esse rei*; and therefore should rather seem
 “ to be within the encouragement than the prohibition of
 “ the act.

“ LORD CHANCELLOR said, that though a translation
 “ might not be the same with the reprinting the original,
 “ on account that the translator has bestowed his care
 “ and pains upon it, and so not within the prohibition
 “ of the act, yet this being a book which to his know-
 “ ledge, (having read it in his study,) contained strange no-
 “ tions, intended by the author to be concealed from the
 “ vulgar in the Latin language, in which language it could
 “ not do much hurt, the learned being better able to judge
 “ of it, he thought it proper to grant an injunction to the
 “ printing and publishing it in English; that he lookt upon
 “ it, that this Court had a superintendency over all books,
 “ and might in a summary way restrain the printing or
 “ publishing any that contained reflections on religion or
 “ morality.

“ An injunction was granted.”

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The following is an extract from the register's book.
 1720. A. fo. 350. b.

“ Geo. Burnett, Gen. quer. } Jovis, 12 Octobr.
 Gul. Chetwood, Joh. Watts, } Upon opening the matter
 et al. Defend : } this present day unto the Right
 Honourable the Lord High Chancellor, &c. by Mr. Lutwyck,
 Mr. Wilkinson, and Mr. Mead, being of the Plaintiff's coun-
 sel, in the presence of Mr. Kettleby and Mr. Emlyn, being
 of counsel for the Defendants, it was alleged that *Thomas*
Burnett, doctor of laws, (to whom the Plaintiff is executor)
 having in his life-time, about the year 1692, written in the
Latin tongue, and pulished a book entitled *Archæologia*
Philosophica, which book was printed for *Walter Ketilby*,
 then a bookseller, in whose name the said book was entered
 in the registry of the Stationers' Company; and a certain
 writer having afterwards published a book called *The Oracles*
of Reason, and therein inserted a translation of part of the
 said Dr. *Burnett's Archæologia Philosophica*, without his
 having had notice thereof, the said Dr. *Burnett*, in order to
 prevent for the future his said book from being reprinted,
 abridged, or translated, without his leave or approbation,
 insisted that the said *Ketilby*, his bookseller, should make
 a declaration of trust to him of the said copy, which the
 said *Ketilby* did accordingly, by writing under his hand and
 seal dated the 22d of *February*, 1694; and no person did,
 during the said Dr. *Burnett's* life, presume to translate the
 said book, he having, in several passages in his other writings,
 expressed himself that the book was only intended to the
 learned, and for that reason was wrote in *Latin*, and not in
 the vulgar tongue; but since the said Dr. *Burnett's* death,
 the Defendants have entered into a confederacy with other
 booksellers to have the said book translated into *English*, and
 published, and advertisements have been inserted in the
 newspapers that the said book, being translated by Mr.
Roussillion, the translation would speedily be delivered out
 to the subscribers; and, upon enquiry, the Plaintiff finds that
 the said translation is erroneous, and the sense and words of
 the author mistaken, and represented in an absurd and ridi-
 culous manner. That the said Dr. *Burnett* was also author of
 a book, intituled *De statu mortuorum et resurgentium*, which he
 did not design should be published, but the Defendants hav-
 ing got a surreptitious copy thereof, gave out they intended to

procure the same to be translated and published. That the Plaintiff being executor to the said Dr. *Burnett*, and by virtue of the statute of the 8th of Queen *Anne*, entitled "An Act for the encouragement of learning," having a right to the copies of the said books, and to the sole right of printing and publishing the same, or to reserve the same unpublished, did cause notice to be given, that this day this Court would be moved for an Injunction to stay the printing, publishing, and selling the said *Archæologia Philosophica*; whereupon the said Defendants, in contempt of this Court, have, in a printed newspaper entitled *The Daily Journal*, of which they or some of them are proprietors, inserted certain advertisements which are reflecting on, and in effect bidding defiance to, this Court; and by advertisement in the said newspaper dated the 10th instant, and this day, have reflected on and publicly exposed Mr. *Francis Wilkinson*, for doing his duty in this Court, as being counsel for the Plaintiffs in this cause: Whereupon, and upon hearing of what was alleged on both sides, His Lordship doth order, that an Injunction be awarded against the Defendants to restrain them, their printers or agents and workmen, from printing, selling, or publishing the translation into English of the said late Dr. *Burnett's* book, entitled *Archæologia Philosophica*, and likewise to stay the translating, printing, publishing and selling the said Dr. *Burnett's* book *De statu mortuorum et resurgentium*; and the Defendant *W. Chetwood*, and all other persons concerned in translating or printing the said books, are forthwith to produce upon oath before Mr. *Hiccocks*, one of the Masters, &c., all copies or printed sheets which they have, or at the time of the notice of this motion had, in their custody or power, of the said books or either of them. And His Lordship doth further order, that the said Defendant *Chetwood*, and all other parties concerned as proprietors, or in printing and publishing the said advertisements, in the said newspapers entitled *The Daily Journal*, dated the 10th of this instant *October*, and this day, do upon notice hereof shew good cause unto this Court, the first day of the next term, why they should not stand committed to the prison of the Fleet for their said offence and contempt.

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